

1 directly for Marc Jackson (“Jackson”), the Director of Public Affairs and Communications for THE
2 AMERICAN RED CROSS.

3 3. Jackson, as the director of Public Affairs and Communications, since 1997, has won a
4 multitude of national awards for the work that he has performed for the defendants. When defendants
5 learned of Jackson’s condition of psoriatic arthritis, which is a chronic condition protected under the
6 Fair Employment and Housing Act (“FEHA”), it has discriminated against him, denied reasonable
7 accommodation and are attempting to force him into quitting. In addition, defendants began retaliating
8 against Jackson because of his protected activities, including protesting the illegal conduct of the
9 defendants.

10 4. Defendant THE AMERICAN RED CROSS is a non-profit corporation, authorized to do
11 business in the State of California.

12 5. Defendant STEVE BROWN (“Brown”) is currently the Vice President of the Western
13 Region for Defendants. Defendant ROBERT BROWNING (“Browning”) is the Director of Human
14 Resources for Defendants.

15 6. The association between Jackson and Setencich began in the early 1990's when Setencich
16 was on the Fresno City counsel and Jackson was the Director of Public Relations and Editor in Chief
17 for the Metro News. The two worked on several issues together, and learned that they worked well
18 together. Thereafter, in 1994, Setencich was elected State Assembly for the 30th District and made
19 Jackson his Chief of Staff.

20 7. In 1997, Setencich became Special Liaison to the Mayor of San Francisco and Jackson
21 began working for Defendants in Southern California.

22 8. Each Defendant had a discriminating animus against Jackson because of his disability,
23 and protected activity, and developed a discriminatory animus against Setencich when they learned of
24 his association with Jackson.

25 9. The true names and capacities of the Defendants named herein as DOES 1 through 30,
26 inclusive, whether individual, corporate, associate or otherwise, are unknown to plaintiff who therefore
27 sues such Defendants by fictitious names. Plaintiff is informed and believes that the DOE Defendants
28 are responsible in some manner for the occurrences herein alleged and that Plaintiff’s injuries were

1 proximately caused by the aforesaid Defendants. Plaintiffs will amend this complaint to show such true
2 names and capacities when they have been determined.

3 10. Plaintiff is informed and believes, and thereby alleges that each of the Defendants herein
4 was at all times relevant hereto the agent, employee or representative and or joint venturer of the
5 remaining Defendants, and was acting at least in part within the course and scope of such relationship.
6 Plaintiffs are further informed and believes, and thereon alleges, that each of the Defendants herein gave
7 consent to, ratified, and authorized the acts alleged herein to each of the remaining Defendants.

8 11. Plaintiff alleges on information and belief that, at all times relevant herein, Defendants,
9 and each of them, have actively participated in the fraud, misrepresentation against plaintiff because of
10 his association with Jackson, who has a disability under FEHA and who has been subjected to
11 discrimination with his disability as a motivating factor.

12 12. Plaintiff perfected his right to sue by filing a claim with the Department of Fair
13 Employment and Housing.

14 **FIRST CLAIM FOR RELIEF**

15 **Association Discrimination**

16 13. Setencich realleges and incorporates herein the allegations in paragraphs 1 through 12
17 as set forth above.

18 14. Setencich was recruited beginning in mid to late 2005 by Defendants, given his legislative
19 and communication qualifications and met with hiring decision-makers.

20 15. Plaintiff interviewed and met with decision-maker's on approximately three occasions.
21 He received positive reviews from the hiring panel and decision-makers. The decision was made to hire
22 Setencich. However, when defendants learned of Setencich's association with Jackson, who they were
23 attempting to force out given his use of family medical leave, disability, and protected activity, they
24 attempted to withdraw the decision.

25 16. Jackson needed the assistance of a Communication Manager to accommodate not only
26 his disability, but the growth of the department and to counter the attempts of the defendants to
27 undermine him and set him up to fail. Jackson found plaintiff to be the most qualified for the position,
28 as did those on the hiring panel.

1 17. Once Defendants, and each of them, learned that Marc Jackson wanted to hire plaintiff,
2 they withdrew their support because of their discriminatory and retaliatory animus against Jackson.
3 Defendants articulated a pretextual reason for not hiring Setencich.

4 18. Defendants, and each of them, took adverse actions against Plaintiff, including but not
5 limited to fraud, failure to hire although qualified, and giving pretextual reasons for the decision not
6 to hire with plaintiff's association with Jackson as a motivating factor.

7 19. As a result of the aforementioned conduct alleged herein, Plaintiff has suffered, and
8 continues to suffer, humiliation, anxiety, mental anguish, emotional distress and lost wages in earning
9 capacity.

10 20. Defendants' willful and knowing failure discrimination of Plaintiff are outrageous and
11 beyond the scope of conduct which should be tolerated by citizens in a civilized society.

12 21. As a proximate result of Defendants' wilful, intentional and malicious conduct, Plaintiff
13 suffered and continues to suffer extreme mental and emotional distress. Plaintiff therefore is entitled
14 to an award of general damages and punitive damages against the Defendants.

15 22. Plaintiff has suffered and continues to suffer irreparable and other injury as a direct and
16 legal result of the actions of Defendants, including severe anxiety, physical ailments directly attributable
17 to stress and other emotion trauma.

18 WHEREFORE, Plaintiff prays for judgment as specifically set forth below.

19 **SECOND CLAIM FOR RELIEF**

20 **Fraud**

21 23. The Plaintiff incorporates by reference the allegations in paragraph 1 through 22, as
22 though set forth fully herein.

23 24. Defendants made specific representations that it intended to hire Plaintiff which brought
24 plaintiff down to Southern California on three occasions. During Plaintiff's first visit, he informed
25 defendants that he had been convicted of filing a false tax return in 1997 where he failed to pay taxes
26 on a stock dividend from TCBY Yogurt with tax consequences of less than \$10,000.00. Defendants
27 informed Setencich that a criminal conviction is not an impediment to being hired and that numerous
28 individuals with convictions had been hired in the past.

1 25. Specifically, in June, 2005, the Human Resource Representative who reviewed
2 Setencich's application and written statement describing the criminal conviction informed Setencich
3 that the conviction would not stop his hire. In late 2005, Defendant Brown took Setencich aside, put his
4 arm around him and told Setencich they had worked with people with criminal backgrounds before; they
5 liked to give people second chances; they hire people for what they can bring to the table; and they
6 wanted to hire Plaintiff. Brown reiterated this to Plaintiff in approximately March, 2006. Browning also
7 told Plaintiff that his criminal background would not impede his hire. These statements were
8 republished to Setencich and others, confirming he would be hired, until approximately the summer of
9 2006.

10 26. However, Defendants knew their statements were false at the time they were made.
11 Defendants, and each of them, decided not to hire Plaintiff for their own illegal reasons, and instead
12 hired other employees with felony convictions and even used them for their ads and campaigns.

13 27. Setencich reasonably relied on the representations of Brown, Browning and Human
14 Resources and did not discover the fraud until approximately September, 2006.

15 28. As a direct and proximate result of the conduct of Defendants, and each of them, Plaintiff
16 continued to visit Defendants and did not look for other employment. Plaintiff has incurred and will
17 continue to incur special damages, including, but not necessarily limited to lost wages and salary, lost
18 stock options and bonuses lost benefits, lost future earnings and benefits, medical costs and expenses
19 all in an amount to be determined according to proof at trial.

20 29. As a further, direct and proximate result of the conduct of Defendants, and each of them,
21 Plaintiff has suffered and will continue to suffer general damages, including severe emotional distress,
22 without limitation in an amount to be determined according to proof at trial.

23 30. The conduct of the Defendants, and each of them, as herein alleged, was malicious,
24 wilful, oppressive, was despicable conduct which constituted wilful, malicious, oppressive conduct on
25 the part of the Defendants, and each of them, which justify an award of exemplary and punitive damages
26 against these Defendants, and each of them, in an amount according to proof at trial or, in a sum
27 sufficient to deter Defendants from such conduct in the future.

28 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth below.

THIRD CLAIM FOR RELIEF

Negligent Misrepresentation

31. Plaintiff realleges and incorporates herein the allegations in paragraphs 1 through 30, as though set forth fully herein.

32. Defendants' representations as relied from above, including plaintiff being told he was to be hired, where plaintiff lost income, not only in travel and time, but made it so he was unable to secure other employment.

33. Defendants' actions were negligent and not in good faith.

34. As a direct and proximate result of the conduct of Defendants, and each of them, Plaintiff has incurred and will continue to incur special damages, including, but not necessarily limited to lost wages and salary, lost stock options and bonuses lost benefits, lost future earnings and benefits, medical costs and expenses all in an amount to be determined according to proof at trial.

35. The conduct of the Defendants, and each of them, as herein alleged, was malicious, wilful, oppressive, was despicable conduct which constituted wilful, malicious, oppressive conduct on the part of the Defendants, and each of them, which justify an award of exemplary and punitive damages against these Defendants, and each of them, in an amount according to proof at trial or, in a sum sufficient to deter Defendants from such conduct in the future.

36. As a result of the aforementioned conduct alleged herein, Plaintiff has suffered, and continues to suffer, humiliation, anxiety, mental anguish, emotional distress and lost wages in earning capacity.

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth below.

PRAYER

1. Award Plaintiff compensatory damages, according to proof, for lost wages, medical and psychiatric care expenses and pain and suffering;

2. Prejudgment interest;

3. Reasonable attorneys' fees;

4. Reasonable costs of suit;

5. For punitive damages; and

6. For any other relief that the Court deems just and proper.

Dated: November 8, 2007

LAW OFFICES OF JILL P. TELFER
A Professional Corporation

/s/ Jill P. Telfer

JILL P. TELFER
Attorney for Plaintiff BRIAN SETENCICH

PROOF OF SERVICE

CASE: Setencich v. The American Red Cross, et al.
COURT: USDC, Northern District, Oakland Division
CASE NO. C 07-03688 SBA

I declare that I am a citizen of the United States, that I have attained the age of majority, and that I am not a party to this action. My business address is 331 J Street, Sacramento, CA 95814. I am familiar with this firm's practice of collection and processing of correspondence to be deposited for delivery via the U.S. Postal Service as well as other methods used for delivery of correspondence. On the below stated date, in the manner indicated, I caused the foregoing document(s) entitled:

FIRST AMENDED COMPLAINT FOR EMPLOYMENT DISCRIMINATION

to be served on the party(ies) or their (its) attorney(s) of record in this action by:

☐ Facsimile transmission to the number(s) noted below.

☒ Placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail and addressed as indicated below. Said documents will be deposited with the U.S. Postal Service at Sacramento, California on this date in the ordinary course of business. I understand that upon motion of a party served service shall be assumed invalid if the postal cancellation date or postage meter date on the envelope is more than one (1) day after the date of deposit for mailing as contained in this declaration.

☐ Hand-delivery addressed to:

Sabrina L. Shadi, Esq.
BAKER & HOSTETLER
12100 Wilshire Boulevard, 15th Floor
Los Angeles, California 90025-7120

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 8, 2007, at Sacramento, California.

/s/ Tricia Lenox

TRICIA LENOX